

Jaromin, Michelle

From: Ehrich, Delmar R. [DEhrich@faegre.com]
Sent: Tuesday, March 10, 2009 6:51 PM
To: Xidis, Claire
Cc: George, Robert; Jorgensen, Jay T.; Jones, Tim; Scott McDaniel; John Elrod; jtucker@rhodesokla.com; Mark_Quayle@cargill.com; Triplett, Eric J.; Robert Sanders; James Graves; Deihl, Colin C.; Mark_Quayle@cargill.com
Subject: Stratus Damages reports/depositions

Ms. Xidis, we previously exchanged email concerning the seven authors of the Stratus damages reports. The defendants' position is that if plaintiff indeed intends to call all seven authors to testify at trial, then Rule 26(a) obligates plaintiff to disclose for each witness his opinions and bases therefor, as well as the considered materials for each such witness, appropriately marked as such. You have maintained that plaintiff has no such obligation.

It seems unlikely that each listed author will testify to exactly the same things. Moreover, if each did so, the court would likely exclude any witness after the first as cumulative. The plaintiff's position, therefore, appears designed to delay the defendants in their efforts to depose those CV authors whom the plaintiff expects to testify at trial and to complete the defendants' experts' rebuttal damages report, which is presently due March 30. Accordingly, I ask that you identify which authors plaintiff intends to call to testify, make the required Rule 26(a) disclosure as to each, and provide me with dates for their depositions on or prior to March 30.

Thank you.